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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/866,145	05/25/2001	Richard Alan Haase		4449

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Mr Richard Haase
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Missouri City, TX 77459

EXAMINER

BARRY, CHESTER T

ART UNIT	PAPER NUMBER
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1724

DATE MAILED: 06/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/866,145

Applicant(s)

HASSE, RICHARD ALAN

Examiner

Chester T. Barry

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 15-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 13 and 15-21 is/are rejected.
- 7) ☒ Claim(s) 11 and 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

35 USC §103 – Nielsen / Sorensen

Claims 1, 2, 4 - 9, 15 - 21 are rejected under 35 USC Sec.103(a) as being obvious over Nielsen, Sorensen, and Pohoreski, as interpreted in the light of Haldeman and either Schwab or Wiker, for the reasons set forth in the previous Office action mailed 9/25/03.

Response to Arguments

At page 10, Applicant recounts a chain of events which applicant believes supports the view that "the Nielsen patent should not be valid" and "may not have been filed according to the rules of the USPTO." Every patent is presumed valid. See 35 U.S.C. Sec. 282. See also MPEP Sec. 1701 regarding examiner's commenting on the validity of issued patents. If applicant is aware of evidence raising a substantial new question of patentability regarding any unexpired patent, applicant is urged to consider filing a request for reexamination of that patent. As for proper rule-abiding filing of the Nielsen patent, the Nielsen patent is not at issue in this proceeding.

At page 15, Applicant admits that Nielsen "does present the dewatering of digested thermophilic bacteria."

At page 16, applicant attacks the enablement of the Nielsen reference. The examiner has carefully studied the supporting affidavit filed by applicant. Insofar as Applicant did not address each Ex parte Forman factor, in the affidavit or the Remarks, this argument will not be considered further. It remains applicant's burden, should he

pursue this line of reasoning, to clearly demonstrate lack of enablement of a US patent which, as noted above, is presumed to be valid under 35 U.S.C. 282.

Applicant argues at page 16 that Nielsen does not describe use of a metal salt. The examiner agrees that Nielsen does not teach use of a metal salt. Applicant should be reminded, however, that the examiner never so contended. Rather, the examiner's position has been (at page 6 of the 9/2003 action) and remains that it would have been obvious to have substituted an inorganic coagulant for Nielsen's Percol 406.

Applicant argues at page 16 that neither Nielsen nor Sorensen appreciates the importance of a quaternized or a "highly charged" coagulant or a polyquaternary amine used in combination with a cationic or anionic polyacrylamide. This argument is not germane to the allowability of claim 1 because claim 1 does not require, i.e., is not limited by, addition of a primary component comprising a polyquaternary compound in combination with a "highly charged" polyacrylamide. Importantly, claim 1 optionally includes addition of a polyquaternary ammonium compound: Claim 1 does not require addition of a quaternary material or any kind. The cationic or anionic polyacrylamide is not limited to a "highly charged" polyacrylamide.

See also page 18 for applicant's similar arguments regarding the Pohoreski patent. The examiner in turn responds similarly.

Applicant is invited to produce evidence to support the assertion that "Both [municipalities and industry] would prefer to dump the sewage into the closest stream and let the down stream inhabitants worry about the disposal problem [than take corrective action]" (at page 20).

Sorensen and Gould

Claims 16 and 18 are rejected under 35 USC §103(a) as obvious over Sorensen and Gould for the reasons of record.

Claims 3 and 24

Claim 3 is rejected under 35 USC § 103(a) as obvious over Nielsen, Sorensen, and Pohoreski (interpreted in light of Haldeman and either Schwab or Wiker), as applied above to claims 1 and 17, respectively, further in view of applicant's admission or USP 5965027 to Allen, for the reasons of record.

"Primary Sludge"

Claim 13 is rejected under 35 USC § 103(a) as obvious over Nielsen, Sorensen, and Pohoreski (interpreted in light of Haldeman and either Schwab or Wiker), as applied above to claims 1, 16, 17, and 18, respectively, further in view of one or more of USP 4380496, USP 3613564, and USP 3397139, for the reasons of record.

At page 29, applicant admits that "biological solids are mixed with primary solids because both solid streams require dewatering and it is much more efficient to utilize the same dewatering equipment to effect dewatering for both streams."

112, 2nd paragraph – "DADMAC family"

Claims 2 – 3 are rejected under 35 USC §112, second paragraph for failing to particularly point out and distinctly claim the subject matter for which patent protection is sought. In claim 2, it is unclear what a "(DADMAC) variety" is because DADMAC is a unique compound. Similarly, in claim 3, it is unclear what an "(epi-DMA) variety" is because epi-DMA is a unique compound. It is not a genus to which more than one specie belongs. See the previous Office action. Applicant has shifted from "family" to "variety" without resolving the ambiguity-of-scope issue.

New Matter

Claims 5, 6 and 9 are rejected under 35 USC Sec. 112, first paragraph, for failure of the original specification to describe the claimed invention. The application as filed supported, ie., described, a polyquat / aluminum sulfate ratio in the range of 1:16 to 1:2. See column 8 line 49. The recited limitation (as amended) in claim 5 recites a range of 1:1 to 1:20. This range is not described in the original disclosure. Please point to column and line where support for this limitation can be found.

Per claim 6, the recited ratio range of 1:1 to 1:20 is not supported whereas the range of 1:8 to 1:10 is (col 6 line 59).

Per claim 9, the recited ratio range of 50 ppm:1 % - 5000 ppm:1 % is not supported whereas the range of 50 ppm:1 % - 300 ppm:1 % is (col 6 line 59).

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Claim 10 –12 Allowable over art

Objection is made to Claims 10 – 12 as being dependent on a rejected base claim, but would be allowable if presented in independent form along with filing of a terminal disclaimer.

Double Patenting

Claims 1 – 4, 9, 10, 15, 16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 – 4, 7, 8, 13, 14, 15, respectively, of U.S. Patent No. 5846435 to Haase in view of Sorensen and Pohoreski, for the reasons of record.

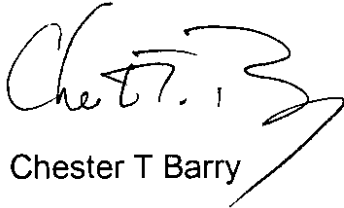
Action Is Final

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

A handwritten signature in black ink, appearing to read "Chester T. Barry". The signature is stylized with a large, sweeping "B" at the end.

Chester T Barry

571-272-1152

CHESTER T. BARRY
PRIMARY EXAMINER